

The Netherlands: recent amendments to remote Bill

On 7 July 2016 the Lower House of the Dutch Parliament passed the amended Bill on Remote Betting and Gaming ('Bill'). If the Upper House of Parliament approves the Bill, it will become possible to obtain a licence to offer online betting and gaming in the Netherlands from the second half of 2017. This licence can include, amongst other things, online poker, online casino games and online sports betting. Roelien van Neck and Lisette den Butter of Bird & Bird LLP provide an overview of the current and future regime for online betting and gaming in the Netherlands, and explain recent amendments to the Bill.

In the Netherlands, games of chance are regulated by the Dutch Betting and Gaming Act (Wet op de Kansspelen) ('DBGA'). The regulating authority is the Dutch Betting and Gaming Authority (Kansspelautoriteit) ('Gaming Authority'). Under the DBGA, it is prohibited to provide the opportunity to compete for prizes if designation of the winners occurs by means of any determination by chance to which participants do not have any overriding influence, unless a licence has been issued for that game. Licences are issued by the Gaming Authority. It is currently not possible to obtain a licence for online games under the DBGA.

The Bill amends the current Dutch Betting and Gaming Act. Under the Bill, it will be possible to obtain a licence for remote (online) games of chance in the Netherlands. A remote game of chance is defined in the Bill as a game of chance 'which is provided at a distance using electronic means of communication' (Article

31). The licence for remote games of chance can be subject to certain conditions, yet to be published. More generally, it is already clear that the Bill will be complemented with so-called delegated legislation, which has also not yet been published.

As well as the possibility to obtain a licence for remote games of chance, other measures that are introduced in the Bill are *inter alia* the establishment of a central register for exclusion from games of chance and further administrative enforcement instruments for the Gaming Authority, including the possibility to check if licence holders observe the conditions laid out.

Amendments to the Bill

Recently, several amendments have altered the Bill. These amendments concern, *inter alia*, advertising and broadcasting restrictions, the prohibition on using current databases and adjustment of the tax rate.

Advertising restrictions

Recent amendments to the Bill have introduced advertising restrictions. However, while various specific advertising restrictions were proposed, most have been rejected. Interestingly, rules have been introduced with respect to the (potential) customers that can be targeted by advertising (i.e. the use of existing customer bases). Further explanation on these rules will be given later in the article. First, some background on the proposed amendments.

An amendment was proposed to ban advertisements for remote betting and gaming via public and commercial broadcasting between the hours of 6:00 and 21:00. This amendment was rejected, but no reasoning was given for this rejection. Dutch advertising law,

however, already contains a prohibition on licensed betting and gaming operators broadcasting or having broadcast advertising and teleshopping messages between 6:00 and 19:00 through linear television (with the exception of neutral references to the sponsorship of media content, so a TV programme could show the name - but not the logo - of a sponsor operator).

Another amendment was proposed to create advertisement regulations for remote betting and gaming similar to those currently applicable to alcoholic beverages. This amendment included an advertisement restriction between 6:00 and 21:00 and, moreover, a stipulation that contains the possibility to create delegated regulations with regard to remote betting and gaming advertisements. This amendment was also rejected.

With regard to advertising, the DBGA already contains a stipulation that requires licensed operators to display a clearly visible notice in any advertisements for betting and gaming, highlighting (a) the risks of excessive participation in gaming; (b) the statistical chance of winning and (c) an indication as to whether the game concerns one-time participation or ongoing participation until further notice (Article 4a paragraph 2 and 3). A warning of such risks is also mandatory for advertising with regard to financial products, alcohol and tobacco. A recent amendment that was accepted, was added with regard to sub (a), and mandates that this should be done by showing text to that effect, drafted in consultation with representative and independent organisations who aim to limit and prevent addiction to betting and gaming.

Broadcasting restrictions

After a recent amendment, the Bill now prohibits broadcasting a programme that offers the opportunity to participate in a game of chance on an 'open TV channel,' meaning a TV channel that can be received by at least 75% of all households in the Netherlands (Article 1b). Also, public or commercial media broadcasters are prohibited from broadcasting such programmes.

The prohibition is applicable to so-called addictive games of chance, and does not address common promotional games of chance, such as SMS services at a talent show. The background behind this prohibition can be found in consumer protection and public health: offering betting and gaming programmes on an open TV channel will not help the prevention of gaming addiction.

Prohibition on using current databases

As mentioned above, a recent amendment to the Bill introduced a prohibition on existing land-based operators on the Dutch market utilising their existing player databases to promote their online offerings.

Under the Bill, a licensed betting and gaming operator, which can be an operator holding a current licence for land-based gaming or, in the near future, a licence for online gaming, is not allowed to use any personal data that it has obtained ('processed') as a result of the participation by persons in another game of chance (Article 4a paragraph 2). In other words, this stipulation limits the commercial use of customer/player databases.

We assume that 'another game of chance as defined in the Gaming Act' should be understood as any licensed or unlicensed game of chance. As such, both current licence holders as well as other

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parties will be affected by this rule. Therefore, all operators will be prohibited from using previously collected personal data when attracting players for other (new) games.

Amended tax rate

In the Bill a tax rate of 29% for both remote and land-based operators has been decided upon. In addition, a 0.25% contribution to an addiction fund and a 1.5% contribution to the Gaming Authority on the gross results of the games must be paid by permit holders in the Netherlands.

Originally a tax rate of 20% was proposed for legal remote betting and gaming, but the Lower House of Parliament agreed upon a tax rate of 29%. Important arguments in favour of a 29% tax rate were that this rate is also applicable to land-based gaming, and, therefore, this will create equal treatment of online and land-based betting and gaming. Also, a similar tax rate reflects the neutrality of taxation. Furthermore, land-based gaming operators spoke against a lower tax rate for online gaming.

Possible adverse effects that have been mentioned by the State Secretary and different media with regard to a tax rate of 29% are as follows:

- As a result of this increased tax rate, it could be harder for operators of legal online betting and gaming websites to compete with illegal online betting and gaming;
- There are fears that Dutch players will turn in large numbers to illegal websites, which can be more attractive to players because these websites do not pay gaming taxes;
- Operators might opt for illegality to avoid paying gaming taxes; and
- The operators that are willing to get a licence for legal online

gaming could try to pass on the tax by cutting back on innovation or by reducing the payout ratio, neither of which benefit the player.

The Lower House of the Dutch Parliament has agreed upon a possible, future adjustment of the tax rate from 29 to 25% for both online as well as land-based operators, under the condition that the tax income with regard to betting and gaming increases as a result of the legalisation of remote betting and gaming. The possible amendment of the tax rate to 25% will be discussed three years after the Bill enters into full force. With this possible amendment, Dutch gaming tax could become more in-line with the gaming tax in other European countries.

Implementation

Following the passing of the Bill on 7 July 2016 by the Dutch Lower House of Parliament, the Bill must now be approved by the Dutch Upper House of Parliament before it can enter into force. The preliminary investigation by the First Parliamentary Committee for Security and Justice will be held on 4 October 2016. This investigation takes place before the plenary debate by the Upper House of Parliament is held. If the Dutch Upper House of Parliament approves the Bill, the Bill will probably be in full force in the autumn of 2017. It is expected that licences for remote gaming will be issued from the second half of 2017.

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1. The Dutch version of the Bill can be found at: <https://zoek.officielebekendmakingen.nl/kst-33996-A.pdf>